

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:03CR204-MU**

**UNITED STATES OF AMERICA** )  
 )  
**vs.** )  
 )  
**TIMOTHY FONSELL GIVENS,** )  
 )  
**Defendant.** )  
\_\_\_\_\_ )

**ORDER**

**THIS MATTER** is before the court upon Defendant's Motion for Reconsideration of the Court's January 23, 2006 order denying his 28 U.S.C. § 2255 motion to correct sentence. Defendant seeks to file this motion under Rule 60(b) of the Federal Rules of Civil Procedure. This rule is inapplicable to criminal proceedings, and therefore an attempt to use that rule to circumvent the ordinary channels of appeal must be denied as a matter of course. The Court notes, however, that even were it to entertain this motion, it is established beyond debate that United States v. Booker, 543 U.S. 220 (2005), does not apply retroactively to convictions that became final prior to the issuance of that decision. U.S. v. Morris, 429 F.3d 65, 66 (4th Cir. 2005) (holding "Nine circuit courts of appeal have considered this issue and have held that Booker does not apply retroactively to cases on collateral review. We agree with these courts.") This motion is therefore **DENIED**.

**IT IS SO ORDERED.**

Signed: April 25, 2006



Graham C. Mullen  
United States District Judge

